

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Kelly E. Bruton,

Plaintiff,

v.

Deputy Wofford, K. White,
Medical Director, Medical Staff at
S.C.D.F.,

Defendants.

Civil Action No.: 0:17-cv-02452-JMC

ORDER

This matter is before the court for review of the Magistrate Judge's Report and Recommendation ("Report") filed on August 30, 2018. (ECF No. 87.) The Report addresses Plaintiff Kelly E. Burton's ("Plaintiff") suit under 42 U.S.C. § 1983 and recommends that the court grant Defendants' Motion for Summary Judgment (ECF No. 71) and deny Plaintiff's Motion for Summary Judgment (ECF No. 75). (*Id.* at 12.) For the reasons stated herein, the court **ACCEPTS** the Report, **GRANTS** Defendants' Motion, and **DENIES** Plaintiff's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards which this court incorporates herein without a full recitation. (ECF No. 87.) As brief background, on September 17, 2017, Plaintiff, proceeding *pro se*, filed his Complaint, alleging constitutional violations pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Specifically, in his Complaint, Plaintiff alleges that he was "forced" to take the medication of another inmate and became sick as a result. (*Id.* at 5.) In terms of relief, Plaintiff desires efficient, quality, and timely health services from the medical staff, reprimand of Defendants, and reform of the grievance system. (*Id.* at 6.)

On April 13, 2018, after brief discovery, Defendants filed their Motion for Summary Judgment. (ECF No. 71.) On April 16, 2018, the Magistrate Judge issued a *Roseboro* Order (ECF No. 72), which apprised Plaintiff of the procedures surrounding summary judgment. *See Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975) (requiring the court to provide an explanation of the dismissal and summary judgment procedures to *pro se* litigants). On April 25, 2018, Plaintiff filed his Motion for Summary Judgment and responded to Defendants' Motion. (ECF No. 75.) On May 8, 2018, Defendants responded to Plaintiff's Motion. (ECF No. 82.)

On August 30, 2018, the Magistrate Judge issued a Report. (ECF No. 87.) The Report reasoned that "no reasonable jury could find that [D]efendants were deliberately indifferent to [Plaintiff's] medical needs." (*Id.* at 10.) Moreover, the Report found that there was not a genuine issue of material fact in which Plaintiff could survive Defendants' Motion. (*Id.* at 7-9.) Lastly, the Report concluded that "the medical staff" is not a "person" under 42 U.S.C. § 1983. (*Id.* at 12.) For these reasons, the Report ultimately recommended that the court grant Defendants' Motion for Summary Judgment (ECF No. 75). (*Id.* at 12.)

II. STANDARD OF REVIEW

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Thus, the court may accept, reject, or modify,

in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

The parties were apprised of their opportunity to file objections to the Report on August 20, 2018. (ECF No. 87 at 13.) Objections to the Report were due by September 13, 2018. (ECF No. 87.) However, objections were due by September 16, 2018, if a party was served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (*Id.*) Defendants did not file an objection to the Report. Plaintiff's Objection was filed on September 19, 2018, which is well after the September 13, 2018, and September 16, 2018. (*Compare* ECF No. 91, *with* ECF No. 87.) Moreover, Plaintiff indicated that his Objection was either written or submitted to the court on September 17, 2018 (ECF No. 91 at 3), which is still untimely. (*Compare* ECF No. 91, *with* ECF No. 87.) Given that Plaintiff's Objection is untimely, the court need not consider it for purposes of reviewing the Report. *See Taylor v. Gainey*, 203 F. App'x 426, 427 (4th Cir. 2006) ("The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance.").

In the absence of timely objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Instead, the court must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28

U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). After a thorough and careful review of the record, the court finds the Magistrate Judge's Report provides an accurate summary of the facts and law in the instant case. (ECF No. 87.) Because Plaintiff's Objection is untimely and there are no other objections, the court adopts the Report herein. *Camby*, 718 F.2d at 199.

IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 87) and incorporates it herein. Therefore, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 71) and **DENIES** Plaintiff's Motion for Summary Judgment (ECF No. 75).

IT IS SO ORDERED.



United States District Judge

October 3, 2018
Columbia, South Carolina